

**KENYA NATIONAL COMMISSION ON HUMAN
RIGHTS**

**4th ANNUAL HUMAN RIGHTS AND DEMOCRACY
AWARDS**

“CONSOLIDATING OUR DEMOCRACY THIS ELECTION YEAR”

**Maina Kiai
Chairman**

*Grand Regency Hotel, Nairobi
February 17th 2007*

Our Chief Guest, the Honorable Adama Dieng, Registrar of the International Criminal Tribunal for Rwanda (I.C.T.R.);

Your Excellencies, Ambassadors, High Commissioners & Representatives of the diplomatic corps;

The Vice-Chair, Commissioners and Staff of the KNCHR;

Your Grace the Archbishop of Nairobi and other Religious Leaders present;

Honorable Members of Parliament;

Distinguished Guests; Ladies and Gentlemen (and All Protocols observed);

As is becoming our tradition, today we are gathered here to honor men, women and institutions that have worked tirelessly--often against tremendous odds--to protect and promote human rights and democracy. It is fitting that these awards occur in memory of the Late Dedan Kimathi wa Wachiuri, one of Kenya's great heroes in the continuing struggles for freedom, economic development and social justice.

We are even more pleased because tomorrow, His Excellency President Mwai Kibaki will unveil a statue of Dedan Kimathi in his honor. We at the KNCHR, and indeed within the broad human rights movement, should be

justifiably proud of the ceremony tomorrow, as it marks one of the milestones in our long-term efforts to ensure that Government recognizes the true heroes and sheroes of Kenya. But even as we salute the Government for listening to us—and we all know how hard that is in this country—we must not rest nor relent. We must guard that this event—important as it is—is not “window dressing” and public relations. We must therefore continue to wage the struggle for transitional justice and historical memory so that our human rights are based on the foundation of social justice, and social values that reject corruption, patronage, impunity and a culture of entitlement for our leaders.

Today, we celebrate the efforts of the men, women and institutions we will be honoring with various awards. We celebrate because all too often, human rights work is rarely celebrated and honored in this country. We celebrate because we recognize the difficulties of human rights work in a context where there are more problems than solutions. And we celebrate in an effort to encourage the awardees, and indeed all Kenyans, to soldier on, no matter the obstacles in their paths, hoping that by their work and example, a culture of respect for human dignity—in all areas of life in Kenya—can be one of the social values we embrace fully.

But we also use this occasion to reflect on the events of the recent past, and focus attention on forthcoming events and issues.

For us at the National Commission, 2006 must stand as one of our most successful years both in terms of impact and in production. I will enumerate some of our successes, but before that, let me ask our Commissioners and

staff here today to please stand. Please join me in a round of applause for these gallant women and men without whom the National Commission would be a shell. Their commitment to human rights, social justice and freedom in Kenya, and their work ethic is exemplary.

Following the publication of our report with Transparency International in February 2006 on the use of taxpayer resources on ostentatious and numerous limousines and vehicles for Ministers and high ranking civil servants, the Minister for Finance, in his budget speech, announced plans to sell off excessive vehicles in the government aiming to collect Ksh. 1.5 billion. Though the process of implementing this directive is proving harder than expected because of the culture of impunity and entitlement, there is no doubt that the first step has been taken, and the next challenge is to ensure the directive was not just public relations.

This was also the year where we saw a reduction in the use of hate speech and incitement to violence in the by-election campaigns in mid-year. We believe that this reduction was in response to the joint work of this Commission and the KHRC during the referendum campaigns of 2005. Unfortunately, we did not see a similar reduction in the use of state resources in the by-elections in direct contravention of the law. In fact we noted the use of the provincial administration in the campaigns, again contrary to the law.

This tells us all that there is still much to be done in this area of political accountability and especially with elections this year. We have submitted evidence of sample cases—from all sides--for prosecution, to the Attorney

General, and we urge his office to play its role in holding the political class accountable for breaches of the law. We also submitted the same evidence to the Electoral Commission of Kenya to take stiff action according to its own rules as a way to embed accountability and respect for the rule of law within the political class as a core tenet of human rights. As the Pinochet saga shows us, there are no time limits in the struggles for human rights, and the argument that it is too late to take action on by-election offences can not and will not suffice.

The past year also saw the handing over of a re-drafted Prisons Act and Rules to the H.E. the Vice President, aimed at increasing human rights in Prisons and embedding human dignity in penal institutions. We are pleased to report that H.E. received the drafts—produced in a participatory manner with NGOs and the Prisons Service—very positively and he has passed them on to the Attorney General for publication. We thank, as always, H.E. the Vice President for his continued commitment to the rights and dignity of the lowest of the low in Kenya: prisoners.

Recommendations from our seminal State of Human Rights report 2003/4 continue to be accepted by state agencies and development partners. For instance, the Ministry of Health's sector wide plan now captures issues of equity across regions, as well as a greater focus on dispensary and health centre levels than had been previously planned before our recommendations. GTZ-Kenya continues to use the report in making its strategic choices, and a whole host of other partners are working with us on the Rights Based Approach to development as a cornerstone for their work in Kenya.

We continue to provide legal advice and other support to individuals whose rights are violated, and last year we completed our first ever tribunal offering redress for violations of human rights. This first case covered the illegal arrest and 1 year detention of Peter Makori, a Kisii based journalist, on spurious charges of murder that were later dropped. This year we will build on that case and at present we have 7 cases that are before us to consider. We believe that this form of redress, as envisaged in the Act creating the National Commission, is one of the major areas that can make a difference to the lives of Kenyans seeking to claim their rights.

And we must mention that last year we finally opened our first office outside Nairobi in Wajir aiming to serve the northern part of Kenya that is often the forgotten zone. The office is envisaged to be a mobile office, traveling to the remote parts of Northern Kenya and doing both reactive and pro-active human rights work in keeping with our mandate. And this year, we will be opening a new office in Kapenguria, West Pokot, to serve the North Rift area that is often the site of violence, conflicts and cattle rustling.

But even as we recognize the achievements of the human rights movement in Kenya, we are cognizant that there are challenges and obstacles that pose a significant threat to the democracy that we seek to entrench in Kenya.

2006 to a large extent marked the beginning of efforts to reduce and retract the democratic space for which lives were lost, blood shed and people imprisoned over the years. The raid on the Standard and KTN remains of concern to us. Some have tried to pass it off as an “event” and not a pattern on which to judge the human rights trend in the country. But nearly a year

after the raid, we still have no cogent idea of the reasons that led to it, outside of the vague assertion from the Minister for Internal Security that it was a security operation. We must not accept that assertion. Why has no one been charged with a security related offence if this was the case? Why have the computers, cell phones and other items stolen during the raid not been returned if this was an isolated event? Deepened democracy and respect for human rights requires that we can no longer accept, as we did in the 1960s, the words of government officials without reasons and evidence.

At the same time of this raid, revelations of dubious foreign characters clearly enjoying state patronage and support at extremely high levels surfaced. That to this day we are not yet certain of the names and nationalities of these individuals who were accorded appointments as Deputy Commissioners of Police and had access to security areas that few Kenyans can access, speaks volumes on the compromised nature of our state security, and to the commitment of our Government to democracy and human rights. What were they here to do and who provided such a warm welcome to them? Why did the state prefer to deport them rather than charge them in open court so we can know who was behind this very real threat to the security of the country?

And there were efforts to ban some NGOs, as well as efforts to control and/or render ineffective independent state institutions that have a watch-dog role such as this Commission and the Electoral Commission. All these actions and events, coupled with a hardening of rhetoric from key Government Ministers; the failure by Government to reach out to all sides to reduce political tensions as recommended by the President's own Eminent

Persons Committee; the dubious absolving of key “pillars” of the Kibaki regime of corruption related charges; and the emergence of the anti-corruption commission as the tool of choice to silence critics—replacing the previously favored sedition charges--suggest a trend heralding what could be a very difficult year for us with elections around the corner.

We must be careful with all politicians—no matter what side of the divide they are—and especially so during an election year. The opposition will attempt to trash the positive gains that have been made, refusing to recognize them. On the other hand, the government will sing of its achievements, refusing to accept that there remain serious challenges, some of which are of its own making.

There clearly have been some gains in the last 4 years and we must cherish them and guard them as we have successfully done with the efforts to limit democratic space thus far. But we must also ask questions regarding these improvements. For instance, we often are told that we are better off now than during Moi’s regime. That is a fact. However, I find this comparison with the Moi regime disingenuous. Surely, how can the decayed and disastrous Moi regime be the yardstick for this government? Is that not similar to Moi’s statements that we were better in his days than Somalia? Should we not be setting our goals and standards much higher? Should we not look at Ireland, South Africa, Ghana, and South Korea as better yardsticks?

For the opposition, we must ask those who were in the Moi regime to explain to us what they would do that is different from Moi’s regime—given

that many were key parts of it? When did they find their “road to Damascus” to change from Saul to Paul?

And for both sides, how did they make all that wealth which they flaunt in our faces? Why are they all so resistant to calls for accountability for past corruption—on one side—and present corruption including Anglo Leasing on the other side?

We must never forget that even with their tensions and divisions, our politicians have an uncanny ability to close ranks when their personal interests suit them. The raise in parliamentary salaries at the beginning of 2003 and the cabinet sponsored resolution to increase the salary and emoluments of the President and MPs late last year are good examples.

The National Commission holds no brief for, nor does it support any side in the ongoing contestation for power. Our fidelity is to the law that created us; and the international human rights norms that we have accepted. But more important, our loyalty is to the Kenyan people, for whom we work as public servants.

And this is indeed true for ALL public servants as stipulated by the Public Officer Ethics Act and the National Assembly and Presidential Elections Act, no matter the calls by some Ministers to favor the government of the day. They must be loyal to the law first and only; not to individuals and partisan interests.

For us, though potentially difficult and tension-packed, we see the elections as an opportunity to continue to make demands on the political class for accountability and attitude change. Not just from us, but more importantly from the people of Kenya who are the employers of the political class, but who have always been treated as servants. We see the elections as providing an opportunity for ordinary Kenyans to further claim their rights and limit the power and reach of government and politicians to their rightful place as agents of the people, not the principals.

For many years, NGOs and religious bodies have been urging Kenyans to elect leaders wisely and to focus on leaders who reflect their aspirations and values no matter the party loyalty. It is time that we all moved forward with these noble calls and put some substance on what exactly we should demand and expect of our leaders. Most important, we as Kenyans must take responsibility for the leaders we elect often moved by “ethnic waves” in the 3-piece suit fashion where we give blanket support for leaders simply because of the ethnic affiliation of the parties they stand on.

If 2002 was the election that started the transition to democracy in this country, then 2007 must be the one where Kenyans are more creative and more demanding of the leaders offering themselves for election. We must use this time to get leaders who can move the democratic and economic agendas forward as two sides of the same coin. We must reject the notion that if we vote for a certain party for the Presidency we must vote for it for parliament and local authorities. This trend breeds a culture of impunity and non-accountability in the leaders for they understand that the only support they require is that of their party leader, not of the people who elected them.

Moving beyond calls to elect good leaders and concretizing this into values and principles that can be forced on all aspirants must then be the challenge that we all non-political Kenyans must seize this year. We must educate the people of this country to assert themselves and demand that the aspirants commit themselves to those values we hold dear and complain so loudly when they are breached. We must challenge the citizens of this country to interrogate and de-mystify power and those who wield it. We must challenge the ethnic cocoons we are building around ourselves and which are used as vehicles for selfish leaders to rise to power for their personal interests and (sometimes) those of their friends. And we must expose and reject those leaders unwilling and/or unable to accept the principles of dialogue, transitional justice, prudence and fairness, changing their tune dependent on whether they are in government or in opposition.

For instance, I find it perplexing that the issue of having a President elected by a majority vote of 50% + 1, in addition to 25% support in at least 5 provinces, is now an issue. This was accepted by all political players and reflected in the views provided to the Ghai Commission in 2001-2002. It was included in the original Ghai draft; it was in the Bomas draft and the Wako draft. It was never contentious. So why the sudden problem with it today?

And that is just one example of shifting goal posts to suit personal whims. In fact the entire political class needs to be questioned as to why the majority of the issues agreed upon—that 80% of the Wako and Bomas drafts—that are not contentious, are not part of our constitution today. If they were indeed

patriotic, then the first business of parliament when it re-opens in March should be passing into the Constitution that 80% that we are all agreed on, and leaving the contentious 20% for the year after the elections in a process that is devoid of grandstanding, arrogance and is participatory.

I am not holding my breath that this will happen. But I not pessimistic either. I am certain that the courage, strength and fortitude that Kenyans have shown so far in pushing for more democratic space and economic development will force the political class to be more accountable, responsive, prudent and humble when they serve Kenya. I am certain that the machinations and grandstanding will not be accepted so that the aspirations of the Kenyan people will find expression through their political leaders as servants of the people. And I am certain that just as 2002 was a watershed for this country and indeed for Africa, 2007 will similarly be one of the milestones in the continued consolidation of social justice in Kenya.

But that means that we must not rest on the achievements we have all made as a country. That means that we must continually seek to push the envelope; that means that we must keep challenging power and speaking truth to power for that is the essence of human rights. And as we continue this struggle we must also recognize that this is often a tough, obstacle ridden struggle, but the price of freedom, one wise man said, is eternal vigilance.

God Bless you all and God Bless this country Kenya.